

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.222 OF 1996

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Fajalmiya Rasulmiya Shaikh... ..Appellant

Versus

The Ahmedabad Municipal Corporation....Respondent.

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Mr.P.V.Hathi, Advocate for the Appellant.

Mr.R.R.Marahsal, Advocate for the Respondent.

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Coram:K.R.Vyas,J

20-12-96

ORAL ORDER

The learned City Civil Judge, Ahmedabad by his well reasoned judgment and order, after considering the evidence on record, has arrived at a finding that the appellant is in unauthorised occupation of the suit cabin, and that he had made encroachment upon the part of the street land by putting up cabin and, therefore, he is not entitled to the reliefs prayed for in the suit. As can be seen from the admission of the appellant himself that the respondent Corporation has not given any licence to do business ;the land below the superstructure of ther suit shop belongs to the Corporation; the respondent Corporation had not recovered any amount from him for regularisation of his cabin ; on 21-5-1987 the suit shop was demolished and removed by the Corporation and that he had no right over the land of ther suit shop and he has no documentary evidence to show that the Corporation allotted the suit cabin to Johatram, there is hardly any case in favour of the appellant. Mr.Hathi for the appellant has submitted that there is nothing on record to show that the suit premises are situated on the public street and, therefore, the Corporation has no power to remove the encroachment under section 231 of the BPMC Act. Mr. Hathi has also made a grievance that the neighbouring shops have been regularised by the Corporation and by not regularising the shop of the appellant, the appellant has been discriminated upon. I do not find any merit in the submissions of Mr. Hathi. It is the case of the Corporation right from the beginning that the appellant has made encroachment on the part of the street land which causes hindrances and interruption to the public in passing and re-passing to the street. As per the evidence of Vinodbhai Laljibhai Panchal ,Ex.75, an officer of the Estate Department, examined on behalf of the respondent, the suit premises are on the road and they create obstruction to the public in the ingress and egress and that the Corporation has not given any

permission or licence to the appellant to carry on business in the suit premises. Similarly as per the evidence of Civil Engineer Mr. Gyasuddin Malik and the map on record, it is clearly established that the suit premises are situated on the public street kept open for the ingress and egress for the public at large. In view of this it is not open to the appellant to make a grievance about the alleged regularisation made by the Corporation in favour of the other shop owners. Since the appellant has failed to establish any legal right over the suit premises, he is not entitled to take recourse to the so-called regularisation alleged to have been made of the other shops. In view of what is discussed above, the Commissioner was justified in proceeding with the removal of the illegal construction erected on the public street in exercise of his powers under Section 231 of the BMC Act. There being no substance in the appeal, the same is dismissed summarily.

At this stage Mr. Hathi requests to continue the status-quo for a reasonable period to enable him to approach the higher Court. Considering the facts and circumstances of the case and more particularly since the appellant is carrying on business in the suit premises, the respondent is directed to maintain status-quo as of date for a period of six weeks from today.

(K.R.Vyas,J.)

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